

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SMALL BUSINESS CAPITAL CORP., et
al.,

Defendants.

Case No. [5:12-cv-03237 EJD](#)

**ORDER TERMINATING IN PART AND
DENYING IN PART MOTION FOR
RELIEF UNDER FEDERAL RULE OF
CIVIL PROCEDURE 60(B)**

Re: Dkt. Nos. 940, 973

This civil enforcement action was commenced by Plaintiff Securities and Exchange Commission (“SEC”) on June 21, 2012, against Defendants Small Business Capital Corporation, Mark Feathers (“Feathers”), Investors Prime Fund, LLC, and SBC Portfolio Fund, LLC. Presently at issue is a motion filed by Feathers which primarily requests relief from this court’s summary judgment determination pursuant Federal Rule of Civil Procedure 60(b). See Docket Item No. 940. The SEC has filed written opposition to the motion and Feathers has filed a reply. See Docket Item Nos. 946, 947.

This court is unable to reach the merits of Feathers’ Rule 60(b) motion. Due to the pending appeal,¹ the most the court can do is either indicate that it will “entertain” such a motion

¹ Feathers has appealed from the summary judgment order and subsequent order granting relief to

1 or indicate that it will grant such a motion. See Crateo, Inc. v. Intermark, Inc., 536 F.2d 862, 869
 2 (9th Cir. 1976). The court will do neither at this time. Nor will it reopen discovery or award
 3 attorney's fees since the court finds no justification for that type of relief under the circumstances.
 4 Accordingly, the hearing scheduled for November 14, 2014, is VACATED. The motion is
 5 TERMINATED as to the request under Rule 60(b) and is DENIED as to all other relief requested
 6 therein. The related motion to compel (Docket Item No. 973) is also DENIED.

7 That said, the court notes that some of the arguments Feathers presented in this motion are
 8 those the court has previously found unpersuasive or without merit. While the court certainly does
 9 not wish to discourage the presentation of legitimate matters, Feathers is advised that it is
 10 improper to continually raise rejected arguments. See Estate of Blas v. Winkler, 792 F.2d 858,
 11 861 n.4 (9th Cir. 1986). Indeed, a variety of restrictions or sanctions can be imposed for that type
 12 of conduct if the circumstances so require. Although the court does not suggest that Feathers has
 13 engaged in anything sanctionable and is certainly not inviting anything in particular, it simply
 14 wishes to indicate that the repetition of failed arguments is of no assistance to the decision-making
 15 process. Feathers should take this instruction into consideration for any future filings.

16 **IT IS SO ORDERED.**

17 Dated: November 10, 2014

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 19 EDWARD J. DAVILA
 20 United States District Judge

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27 the SEC. See Docket Item No. 625 (Appeal number 13-17304).